stated that six persons had died in detention in the period from June 1990 to June 1991 and that during the same period 782 persons had been detained under the different sections of the Internal Security Act as well as the state of emergency. 16/

E. Cessation of all political trials and political executions

54. In paragraph 6 (e) of the Declaration, the General Assembly calls on the Government to "cease all political trials and political executions". With regard to this issue, the Government referred to the information it supplied with regard to the question of the release of all political prisoners and detainees set out above (see paras. 29-44).

55. Political trials still continue under the Internal Security Act, other legislation and under common law, according to ANC, PAC, COSATU and the Human Rights Commission. The Commission reported that at the end of July 1991 138 trials (including 9 in the homeland of Bophuthatswana, and 1 in Transkei) involving 1,377 individuals were in progress and that only eight of the defendants had been granted indemnity. 7/ According to COSATU, its attorneys alone had defended some 1,485 members and trade union officials involved in over 166 trials. Of these only 57 had been convicted. Further, according to COSATU, the arrest in July this year of workers protesting peacefully outside court against the harassment of COSATU leaders, including its General Secretary, had added over 140 more political trialists to the list. 14/

56. With regard to executions, the Human Rights Commission reported that while no executions had been carried out over the previous 18 months, death sentences were still being handed down and at the end of June 1991 327 persons were on death row, of whom 19 were considered political prisoners. 15/ For its part, ANC criticized the decision of the Government to lift the moratorium on death sentences and urged that it be reinstated. 17/

IV. OTHER ELEMENTS CONDUCIVE TO FREE POLITICAL DISCUSSION AND TO THE PROCESS OF NEGOTIATIONS

57. In paragraph 7 of the Declaration, the General Assembly lays down as one of the objectives the creation of the "necessary climate in which free political discussion can take place - an essential condition to ensure that the people themselves participate in the process of remaking their country". Three elements have been found to be directly related to the issue of free political discussion and activity: freedom from violence, freedom of assembly and freedom of the press (A/44/960, annex I, para. 87).

A. Creation of an atmosphere free of violence

58. The linkage between an atmosphere free of violence and progress towards negotiations was recognized by the General Assembly in the Declaration, paragraph 8 of which called for negotiations "in an atmosphere which, by mutual agreement between the liberation movements and the South African regime, would be free of violence". The United Nations team that visited South Africa in June 1990 reported on certain types of violence, including violence related to activities by the police and security forces, attacks by hit squads against anti-apartheid activists, violence by vigilante groups and by the far right, violence between political organizations and violence related to the armed struggle. The violence in Natal was considered to be a combination of several of these types (A/44/960, annex I, para. 89).

Extent of the violence

59. The issue of violence, its detrimental effect on the negotiating process and the need to bring violence to an end were given considerable importance in the submissions received by the Secretariat. Statistical information on the number of deaths and injuries was submitted by several organizations. During the one-year period ending in June 1991, the Human Rights Commission recorded that 2,641 persons died and 4,085 were injured in vigilante-related incidents; 34 persons died and 42 were injured by assassination squads; and 29 persons died and 246 were injured as a result of right-wing violence. 15/ SACC reported more than 4,000 deaths in Natal province alone up to May 1991. 7/

Causes of violence

60. According to the Government, violence over the last year was mainly of a political nature and, to a certain extent, a continuation of the violent conflict that had earlier erupted in the province of Natal. Violence, the Government stated, had gained momentum from the political reforms and the preparations for negotiations, which inevitably led to some political posturing and positioning. 5/

61. Addressing the causes of violence, the Black Sash stated that the Government had been "singularly reluctant to act against right-wing commandos and against Inkatha", and had shown a "remarkable tolerance" of what some media called "Black on Black violence". That same organization referred to the "overwhelming circumstantial evidence of outbreaks of violence being orchestrated, of existing conflicts being used to exacerbate violence, of police partiality", and alleged that a programme of internal destabilization had been launched with the aim of weakening ANC. The Black Sash expressed particular concern at the emerging pattern of assassinations of middle-level ANC leadership and the apparent refusal of the Government to follow up leads vigorously and scrupulously. The Black Sash also referred to allegations of human rights violations in ANC camps outside the country and recommended that those allegations be confronted in the interests of ANC credibility as a major partner in a future government. 16/

62. COSATU reported that its monitoring of the violence led it to conclude that the violence was "not spontaneous and uncoordinated, but has been planned and orchestrated". Some of the features of the violence that led COSATU to this conclusion were the apparent precision with which the violence was switched on or off at critical times; the central role the security forces were playing in coordinating and facilitating the violence, both through overt and covert means; the systematic and large-scale way in which violence had been imported into areas that had been hitherto peaceful; and the failure of the authorities to take decisive action to stop the violence or bring the culprits to book, despite frequent and detailed information supplied to them. 14/

63. A number of organizations, including ANC, PAC, COSATU, SACC, the Human Rights Commission and the Black Sash, provided information on reports of secret support by the Government for IFP and its trade union (UWUSA), as well as the alleged involvement of the security forces in violence. In particular, ANC referred to the disclosures in July 1991 of the State sponsorship of Inkatha to serve as a force to counter the influence of ANC, and the involvement of the South African Defence Force, special forces and mercenaries in the perpetration of violence in the Pretoria-Witwatersrand area and some parts of Natal. 18/ The view was expressed that such disclosures had created a serious moral crisis in the country and a widespread breakdown of trust in the Government; the capacity of the Government to be both a referee and a player in the process of negotiations was questioned. 19/

Initiatives against violence

64. During the first months of 1991, a number of initiatives were taken with regard to the violence. In January 1991 an agreement was signed by the leadership of ANC and IFP with regard to the violence. However, according to ANC, the violence increased and took on a more organized and systematic character. Faced with that development, ANC on 5 April 1991 addressed an open letter to the Government demanding that certain steps be taken to halt the violence by 9 May 1991, failing which ANC would suspend discussions and contacts with the Government. 20/

65. In this context, the Government stated in its submission that it "bears the final responsibility for the maintenance of law and order", and "accords the highest priority to the termination of violence and intimidation and their detrimental impact, not only socially but also on the negotiating process".

66. The Government described a series of measures it had taken to curb the violence, including an increase in the strength of the police force by 10,000 members and a calling up of reserve forces. Moreover, it had prohibited the carrying of spears and other dangerous implements in unrest areas, except during certain traditional cultural occasions when prior notice had to be given to the police. The Government gave assurances that the question of carrying arms in general was being re-examined. The Government also stated that it had taken initiatives on the political level to curb the violence, including a call for a tripartite meeting, the convocation on 24 and

25 May 1991 of a conference on violence and intimidation, the decision to establish a standing commission on violence and intimidation, and instructions to the security forces to act with complete impartiality.

67. In its submission, SACC reported that after the conference on violence and intimidation, which was not attended by all the major parties concerned, church and business leaders facilitated the convening of a peace summit on 22 June 1991, in which all significant political parties participated. The Peace Summit set up a preparatory committee for a national peace initiative, including the Government, ANC and IFP, which has since produced drafts on codes of conduct both for political parties and organizations, and for the security forces. A draft national peace accord incorporating these codes and including other elements such as an outline of measures to facilitate socio-economic reconstruction and development, provisions for a commission of inquiry, national peace secretariat, regional and local dispute-resolving committees, national peace committees and ways of enforcing the peace accord has been elaborated for discussion. This national peace accord is expected to be signed at a national peace convention on 14 September 1991. COSATU recommended that the international community monitor the implementation of the accord, once it is formally ratified, and actively work with the national peace committee, which will oversee implementation of the accord. 14/

68. In its observation regarding the peace summit, the Government stated that all participants agreed to work for peace in South Africa, to involve their members and supporters at all levels in such work, to work together and with others in joint initiatives for this purpose and to study and research the cause of violence, to expose without fear or favour the findings of such research and to propose action required to deal with such causes. 5/

B. Freedom of assembly and freedom of the press

69. With regard to the issue of freedom of assembly, the Government stated that no organizations were at present banned, proscribed or restricted and that there were no restrictions on political activities in South Africa and that individuals and political parties might organize as they wished. It stated further that the right to freedom of speech and of organization had been consolidated by allowing protest marches to be held, subject only to reasonable measures of control, and that the Government had no double agenda and no strategy of disrupting its opponents. In his address on 2 February 1991, the State President underlined the fact that the rights of freedom of assembly and political expression were fully enjoyed and exercised in South Africa. 5/

70. For its part, the Human Rights Commission stated in its submission that under the Internal Security Act and other legislation the Government had the legal authority to control public gatherings and pointed out that during May 1991 over 2,500 persons had been arrested for attending gatherings declared illegal. The Black Sash reported in its submission that there was clear evidence that extra-parliamentary groupings to the left of the

Government were being hampered in their legitimate political operations; rallies, meetings and marches by ANC and COSATU, for example, had repeatedly been blocked or disrupted by police action.

71. COSATU provided information relating to restrictions on freedom of assembly and political activity. It reported in its submission that these restrictions were imposed through targeted violence against activists and their families. It said that attacks on its members had intensified, particularly in industrial areas and workplaces; workers were forced to show their membership cards and if they were not members of Inkatha/UWUSA, they were often assaulted. In addition, a number of COSATU members had been injured or killed in the previous two weeks.

72. In connection with freedom of the press, the Government reported that it had lifted the media emergency regulations previously imposed and it was envisaged that the freedom of the press would be protected in the proposed bill of rights to be entrenched in the constitution. In this regard, the Human Rights Commission reported that two sections of the Internal Security Act had been repealed, thus removing the powers to close down, suspend or ban newspapers or similar periodicals; however, the Commission said other laws were still in force that placed restrictions on the press.

V. MATTERS ENHANCING OR OBSTRUCTING THE PROCESS OF ENDING APARTHEID

A. Removal of the pillars of apartheid

73. Since June 1990, the Government has enacted important measures towards dismantling the basic laws of apartheid. In its submission for the present report, the Government indicated that "more than a hundred discriminatory laws and regulations were abolished over the past 12 months". 5/ The most significant steps taken concern the repeal of the legislative pillars of apartheid. On 17 June 1991, President F. W. de Klerk, addressing the Parliament, said:

> The year 1991 will become known in history as the year in which South Africa finally removed statutory discrimination - apartheid - from its system. Now it belongs to history. The votes that have just taken place, and those of the preceding weeks, have finally brought to an end an era in which the life of every South African was affected in the minutest detail by racially based legislation. Now everybody is free of it ... Statutory racial discrimination has been honestly and totally removed. 5/

74. The Discriminatory Legislation Regarding Public Amenities Repeal Act, No. 100, of 1990 came into effect on 15 October 1990. This Act abrogated the major legislation allowing for social segregation in public facilities, namely, the Reservation of Separate Amenities Act, together with the provisions of a number of different laws (such as section 1 (i) of the Road

Transportation Act of 1977, which subjected the granting of road carrier permits to the condition that only persons of a certain racial group be transported).

75. In June 1991, the South African Parliament adopted the Abolition of Racially Based Land Measures Act, No. 108, of 1991, repealing the Group Areas Act, No. 36, of 1966, the Black Land Act, No. 27, of 1913, the Development Trust and Land Act, No. 18, of 1936, and the Black Communities Development Act, No. 4, of 1984, with effect on 30 June 1991. Also annulled were the Free Settlement Areas Act and the Local Government Affairs in Free Settlement Areas Act, both of 1988. It should be recalled that the Black Land Act and the Development Trust and Land Act, collectively known as the Land Acts, had established the principle of territorial segregation and confined 84 per cent of South Africa's population to 13 per cent of the land. In March 1991, the Government issued a White Paper on Land Reform, aimed at "making land more easily affordable and accessible to everybody". 5/

76. In June 1991, the Parliament also adopted the Population Registration Act Repeal Act, No. 114, of 1991, which repealed the Population Registration Act, No. 30, of 1950. The new Act legally marked the end of race classification in South Africa and as such has an important symbolic value.

77. The Interim Measures for Local Government Act, also adopted in 1991, provides for local communities to negotiate their own models of joint local government. Accordingly, local communities (white towns and black townships) will, on a voluntary basis, be able to establish single administrations for the provision of services, hold joint meetings with the authorities to bind all participants and enter into agreements to unify the municipalities in whole or in part.

78. In its submission for the present report, the Government also mentioned a number of other laws passed by Parliament in 1991, notably the General Law Amendment Act, which eliminated racial restrictions in title deeds, the Mining Rights Amendment Act, which ended racial restrictions with regard to prospecting and mining rights and the Child Care Amendment Act, which enables parents to adopt children from other groups.

79. While most political parties, movements and other organizations concerned in South Africa have welcomed the repeal of the major apartheid laws, many consider that it will have only a limited impact on the daily lives of the majority of South Africans. According to the Black Sash, for instance, "it is becoming increasingly clear that, while the legal pillars of apartheid have been removed, the practices of apartheid are very much in place". 16/

80. The Black Sash underlined, in particular, that the Population Registration Act Repeal Act allows the retention of the population register until the Republic of South Africa Constitution Act of 1983 is abrogated, and that, at this time, issues such as social pensions and education are still administered on an "own affairs" basis. 16/ According to the Democratic Party, "the Government is aware of the duplication and fragmentation caused by

the application of the concept of own affairs, and is obviously taking steps to move away from it". 21/ ANC has condemned as "totally unacceptable" the retention of the population register, 22/ while PAC has stated that the Government has "only tinkered with the obnoxious Population Registration Act". 23/

81. Commenting on the lack of specific legislation outlawing the segregation of facilities by municipalities, the Black Sash also indicated that "people not formerly admitted to 'white' facilities continue to be excluded by tactics such as exorbitant entrance fees, high joining fees, privatization of facilities and in some cases the closing of facilities". 16/ Similarly, the Interim Measures for Local Government Act was criticized for allowing local government bodies controlled by the Conservative Party to maintain their present racially exclusive structure.

82. Many political parties, movements and other organizations consider that the Abolition of Racially Based Land Measures Act does not address the issue of restoration of land to the communities that were forcibly removed in terms of the Land Acts or of the Group Areas Act. In its response to the White Paper on Land Reform, ANC emphasized that "restoration of land to the victims of forced removal must form the underpinning of any credible land policy". 24/ PAC has dismissed the repeal of the Land Acts as "meaningless". 25/

83. Responding to demands from various political organizations, the Government has added a section to the Abolition of Racially Based Land Measures Act to set up an advisory commission, to which the victims of removals can present claims for compensation. However, many anti-apartheid organizations still criticize the Act for entrenching the current land ownership and occupation pattern.

84. The Black Sash, for instance, stated that "the new legislation, with its heavy emphasis on land as a resource for wealth creation and commercial exploitation, will do little to provide justice for those who have been totally excluded from access to land". Likewise, the Black Sash expressed fear that a chapter on "norms and standards in residential environments", incorporated in the Abolition of Racially Based Land Measures Act, "could be used to exclude Blacks from White areas". It added that, while Black South Africans are now legally able to buy properties and settle in formerly White residential areas, very few have the financial means to do so. 16/

85. On the other hand, in its submission for the present report, the Democratic Party, commenting on some parts of the new legislation, observed that "the Government has decided that the forcible removal of rural Black communities will no longer take place" and has "discarded any plans to promote the independence of the 'homelands' - thereby departing from one of the fundamental principles of the apartheid ideology". It added that "there is today no legal racial barriers to the occupation and ownership of land in South Africa".

B. Socio-economic inequalities

86. In his report of 1990, the Secretary-General noted the "grave social injustices that have been inflicted by apartheid on the Black population" (A/44/960, para. 15).

87. Most political parties, movements and other organizations concerned agree that the mere repeal of basic apartheid laws will not significantly alleviate these injustices nor will they modify the main socio-economic features of South African society. The South African Chamber of Business (SACOB) wrote in September 1990:

> "Apartheid has been the cause of historical injustices and the redressing of these will require economic policies that go beyond the repealing of social laws and functional deregulation. This means that socio-economic infrastructure, particularly in the fields of housing and education, should receive the highest priority in future state expenditure programmes". 26/

88. The South African Government allocated 38.2 per cent of total budgetary expenditure for social spending in its 1991/92 budget (as compared to 36.5 the previous year), as well as R 3 billion to the Independent Development Trust for social upliftment programmes. ANC, however, criticized the budget for failing to achieve immediate racial parity on a number of social services and stated that "the inadequate social expenditure was not a result of insufficient overall revenue but rather reflected ongoing apartheid budget priorities". 27/ COSATU has opposed the imposition of a new value added tax (VAT), saying that it would "place an enormous burden on working and poor people, whose resources are already stretched to breaking point". 14/

89. Political parties and movements, as well as such organizations as those representing the business community, warn that the persistent socio-economic inequalities, coupled with the rising expectations of the majority of the South African population, could make the social fabric of the country even more fragile and thus impede the unfolding of the democratization process. SACOB underlined in its submission that "poverty stands in the way of democracy in South Africa. Therefore, concerted efforts will be needed to remove the most glaring areas of unequal opportunities and treatment as soon as possible". SACOB envisages a major role for the business community in this regard, and stresses that "a wider concern with socio-political change will necessitate a broadening of the objectives of business in a functional sense".

Labour

90. The situation in the field of labour remains a major source of concern for most political parties and organizations in South Africa, as unemployment continues to rise. According to SACOB, 6 million South Africans, or 43 per cent of the economically active population, are now unemployed. 26/ Therefore, "it is a common cause between organized business and labour that a major restructuring of the South African economy is necessary". In its

submission for the present report, COSATU stated that it is "pushing, as a matter of urgency, for negotiations with the state and employers on an economic reconstruction programme involving all parties". Such negotiations will "be aimed at, inter alia, job creation programmes and the provision of basic needs".

91. Significant progress was achieved during the period under review regarding the exercise of basic rights (such as collective bargaining, freedom of association and the right to withhold labour) by workers, as an agreement - known as the Laboria Minute - was reached in October 1990 between COSATU, NACTU, SACCOLA and the Government. The agreement cleared the way for the removal of several restrictive amendments to the Labour Relations Act, introduced in 1988, and for the adoption in February 1991 of the Labour Relations Amendment Act. COSATU welcomed the adoption of this Act as a "major victory for the trade union movement". 28/ Amendments to the Basic Conditions of Employment Act and to the Employment Insurance Act, which were tabled in Parliament in June but will not be legislated until next year, provide for the extension of the ambit of these Acts to farm workers. 5/ The Government has also requested the National Manpower Commission (NMC) to investigate the possibility of extending labour legislation to domestic workers.

92. COSATU, however, has criticized the Government for "failing to honour its commitment made in the Laboria Minute". 14/ According to COSATU, while this Minute specified that basic rights should be extended to farm, domestic and public sector workers, the Government is procrastinating on the question, refusing for instance to extend the Wage Act to unprotected workers before 1996. COSATU also considers the fact that "various pieces of legislation have been introduced without consultation with the unions concerned" as contrary to the "spirit of the Laboria Minute". It indicates that while it has agreed to participate on an interim basis in NMC, the Government has "reneged" on its agreement to restructure that Commission. At the fourth national congress of COSATU, in July 1991, it was decided that COSATU would campaign for a moratorium on job retrenchments and for an end to the privatization or "commercialization" of public sector corporations.

Education

93. The persisting crisis in the field of education has led to a growing consensus in South Africa on the need for the establishment of a single non-discriminatory education system. The discussion document on an education renewal strategy, released by the Government in June 1991, recommended a non-racial future education model and said that "justice in educational opportunities must be afforded". 29/ The report added, however, that freedom of association must form the cornerstone of a new education model and that adequate allowance must be made for the accommodation of diversity such as language, religion or culture. ANC welcomed the decision to abandon race as a criterion in education, but warned that "the modified education system could be used to continue the perpetuation of privilege, exclusivity and separation under the guise of diversity and freedom of association". 29/

94. The Government, however, has indicated that education is to be administered on an "own affairs" basis until a new constitution is in place. In the meantime, it has approved three new models for White state schools, enabling them to admit pupils from other race groups provided that a minimum of 72 per cent of parents agree. 29/ The decision to desegregate White state schools on a voluntary basis led to the opening of some 205 schools out of 2,000 White schools in January 1991. 30/ Similarly, the Universities Amendment Act, which was adopted in April 1991 and ended racial quotas at universities, did not provide for the repeal of the entire Universities Act of 1955. The latter still allows the establishment of separate universities along racial lines, according to the South African Institute of Race Relations (SAIRR). 29/

95. The Government has pledged to reduce existing backlogs in Black education by increasing education spending, which now represents 22 per cent of total budgetary expenditure. It is also expected that a substantial portion of the R 2 billion allocated in 1990/91 to the Independent Development Trust will be spent on education projects. 31/ In response to demands from the National Education Coordinating Committee (NECC), the Government recently agreed that education authorities may share unused or under-utilized facilities "whenever feasible". However, disputes continue over the occupation of empty schools, sometimes leading to violent clashes. ANC stressed that the measures taken so far addressed only partially the main aspects of the educational crisis described as being of "monumental proportions" and pointed at the persisting disparities between the funds spent by the Government on the education of each Black child and each White child. 32/

Land and housing issues

96. As mentioned above, the South African Parliament, by adopting the Abolition of Racially Based Land Measures Act, abrogated the Black Land Act of 1913 and the Development Trust and Land Act of 1936. Several organizations have pointed out that the new Act does not provide, however, for a clear programme of restitution to the victims of forced removals. The Government's White Paper on Land Reform described such a programme as "not feasible". The commission set up to investigate claims for restitution has advisory powers and is mandated to consider only reallocations of land still held by the State.

97. According to the Democratic Party, the Government realizes the need for land to be provided for Black agricultural settlement and has enacted measures for "Black farmers to have the same entrée to the services and finances as members of other communities". 21/ ANC has criticized the Government for "explicitly refusing to deal with the landlessness and dispossession that is the direct legacy of apartheid" and for failing to "consult the communities who have been the victims of land dispossession". 24/

98. The Upgrading of Land Tenure Rights Act, adopted in 1991, provides for the upgrading of lower-order land tenure rights to full ownership. ANC welcomed this "attempt to provide ownership rights to blacks who are presently tenants" as a "positive move". It considers that "land reform means land

redistribution", and it has criticized the Government's policy for "codifying the present state of dispossession under the cover of free market proposals". 24/ PAC, dismissing the importance of the new laws, stated that "only a democratic Constitution will ensure that the land is returned to its right owners". 33/

99. In its 1991/92 budget, the Government has allocated R 500 million to the National Housing Fund, for the purchase and servicing of land as well as general housing and infrastructure improvement projects. It has also indicated that between August 1990 and July 1991 the Independent Development Trust spent R 750 million on a capital subsidy scheme to assist 100,000 first-time buyers to acquire a serviced site. 5/ According to the Democratic Party, "the Government has accepted the inevitability of Black urbanization and the need for providing sufficient land for Black housing", as well as the "need that alternative provision has to be made for the large and rapidly increasing squatter community". 21/

100. Calling for the adoption of more radical measures, several organizations and political parties have pointed out that "the vast majority of South Africans have been left so desperately poor that they have no financial means to purchase the property that may in the future be available to them". 34/ They have also deplored the Government's recent decision to strengthen measures aimed at enforcing anti-squatter legislation. 35/

Health

101. Health care in South Africa, as highlighted in the first report of the Secretary-General (A/44/960 and Add.1-2), continues to be characterized by marked inequalities between the various racial groups, in terms of both Government spending and health indicators. The report of the Department of National Health on 1990 health trends expressed concern at the declining health of South Africans, reflected by, among other things, an increasing number of notified tuberculosis cases. 36/ Most of the Black population still depend on the public sector for its health care, as only 5 or 6 per cent of Blacks (as compared to 70 per cent of the White population) are covered by the Medical Aid system of private insurance. 26/

102. Measures announced in May 1990 by the Minister of National Health and Population Development for the opening of all hospitals to all races seem to have had a limited impact, and according to SAIRR "several hospitals remain segregated in practice". 29/ The Government has indicated that the field of health also will continue to be regarded as an "own affair" until a new constitution is in place. SACOB underlined that "the fragmentation of health services on racial and other lines has been unsuccessful and prohibitively expensive and this cannot be further sustained or morally defended". 26/

103. In May 1991, the Government launched a national health plan for South Africa whereby academic hospitals will become autonomous bodies funded by the central Government, while the provision of primary health care will be devolved to local authorities. Medical and other organizations concerned have

welcomed this new emphasis on primary health care and the involvement of communities in the development of their own health services, but they stress that "talks and policy statements need to be transformed into actions". 26/

104. In its submission for the present report, SACOB outlined further actions that needed to be taken by the Government in the health sector and stressed in particular "the urgent need to disband all the different ministries of health and the 'own affairs' system in health care to create a unitary department of health". Noting that the Department of Health seems to be intent on privatization, SACOB warned that privatization of medical facilities on a wide scale "will lead to rapid decline in the quantity and quality of care in the public sector".

VI. GUIDELINES TO THE PROCESS OF NEGOTIATIONS

105. The Declaration on Apartheid and its Destructive Consequences in Southern Africa set out, in paragraph 8, guidelines to the process of negotiations in South Africa. Stating "that the parties concerned should, in the context of the necessary climate, negotiate the future of their country and its people in good faith and in an atmosphere which, by mutual agreement between the liberation movements and the South African regime, would be free of violence", the Declaration considered that the process could begin based on agreements concerning: (a) the mechanism for the drawing up of a new constitution; (b) the role to be played by the international community in ensuring a successful transition to a democratic order; and (c) the necessary arrangements and modalities for the transition, which would include the holding of elections.

106. Disagreements notwithstanding concerning the appropriate climate for negotiations, a public debate has begun on the content of the negotiating process and on the mechanism as well as the necessary arrangements and modalities for the transition to a democratic society in South Africa. Some of the parties concerned have already proposed basic principles that should be included in a future constitution.

107. A convergence appears to be developing among the parties concerned with regard to these principles, basically, around those envisaged in the Declaration. Differences persist, however, regarding the mechanism to draft a new constitution and the transitional arrangements and modalities.

108. While the idea of a multi-party conference or an all-Party congress is gaining ground, for some it is seen as a first step towards agreeing on the forum to draft a new constitution, while for others it is seen as a constitution-making mechanism.

109. The idea of transitional arrangements seems to be generally accepted and various proposals on this issue range from the establishment of an interim government or a national unity government to giving a voice to non-parliamentary parties and organizations in important policy decisions during the period of transition.

110. At this stage, the process towards negotiations on a new constitution holds the promise that common ground may be reached on outstanding issues. In that context, the conference of patriotic forces, scheduled for September 1991, may become a step in this process. Along similar lines, the draft national peace accord, if effectively implemented, could lay a firm foundation on which peace and reconciliation in South Africa can be achieved. It is envisaged that the implementation of this accord will be based on consensus. SACC has expressed the hope that "the success of this process [peace accord] will open the way for the actual constitutional negotiations". 7/ Finally, the parties concerned have not yet developed comprehensive proposals regarding the role to be played by the international community in ensuring a successful transition to a democratic order.

A. Principles envisaged in a new constitution

111. The Declaration outlined, in paragraph 3, a set of fundamental principles regarding this new constitutional order, among which were: (a) South Africa shall become a united, non-racial and democratic State; (b) all its people shall enjoy common citizenship and nationality, regardless of race, colour, sex or creed; (c) participation in the government and administration of the country shall be based on universal, equal suffrage, under a non-racial voters' roll and by secret ballot, in a united and non-fragmented South Africa. The principles also referred to such issues as freedom of association, the protection of human rights under an entrenched bill of rights, a legal system providing equal treatment for all as well as an independent and non-racial judiciary. Finally, the Declaration noted that the acceptance of these principles would enable South Africa to take its place among the world community of nations.

112. In his opening address to Parliament on 1 February 1991, State President F. W. de Klerk "put forward a 'Manifesto for the New South Africa' 5/ which may serve as a point of departure in the search for national consensus". The Manifesto declares a commitment to the creation of a free and democratic political system, in which all people shall be free; all people shall be equal before the law and shall enjoy equal rights regardless of race, colour, sex or creed. The right to freedom of expression, within the generally recognized bounds of responsibility, and the right to the freedom of movement and of association are also included in the Manifesto. While expressing a commitment to the elimination of "all discrimination between groups of people or between individuals" and to the repeal of "discriminatory legislation", the Manifesto states that "the rights of all individuals and minorities defined on a non-racial basis shall be adequately protected in the constitution and in a constitutionally guaranteed and justiciable bill of rights". The Manifesto also declares that "all the people of our land shall participate fully at all levels of government on the basis of universal, adult franchise".

113. At the conclusion of his address, President de Klerk said that the ideals expressed in the Manifesto could provide the cohesiveness of a new South African nation that would include all peace-loving South Africans on an equal

footing. He added that this Manifesto could be associated with a bill of human rights, to which the Government was already committed, and could give direction to the constitutional negotiations that lied ahead. 5/

114. In its submission for the present report, the Government noted that on 2 February 1990, the State President said:

> The Government accepts the principle of recognition and protection of the fundamental individual rights which form the constitutional basis of most Western democracies. We acknowledge, too, that the most practical way of protecting those rights is vested in a declaration of rights justiciable by an independent judiciary. However, it is clear that a system for the protection of rights of individuals, minorities and national entities has to form a well-rounded and balanced whole. South Africa has its own national composition and its constitutional dispensation has to take this into account. The formal recognition of individual rights does not mean that the problems of a heterogeneous population will simply disappear. Any new constitution which disregards this reality will be inappropriate and even harmful.
>
> Naturally, the protection of collective, minority and national rights may not bring about an imbalance in respect of individual rights. It is neither the Government's policy nor its intention that any group - in whichever way it may be defined - shall be favoured above or in relation to any of the others. 5/

115. In a discussion document circulated widely to its membership, 37/ ANC put forward a set of principles that are quite similar to those stated in the Declaration. ANC envisages a united, democratic, non-racial and non-sexist South Africa, a unitary State where a bill of rights guarantees fundamental rights and freedoms for all on an equal basis, where South Africans live in an open and tolerant society, where the organs of government are representative, competent and fair in their functioning, and where opportunities are progressively and rapidly expanded to ensure that all may live under conditions of dignity and equality. ANC considers that government should reflect the will of the majority, be effective but not all powerful; it should operate within the framework of the constitution, acknowledging a separation of powers and the existence of fundamental rights and freedoms as guaranteed in a bill of rights. 37/

116. Another section of the ANC discussion document, 37/ entitled "The Structure of a Constitution for a Democratic South Africa", gives commentary on such issues as those concerning the branches of government, the composition of the legislative branch, the judiciary and the administration of justice as well as elections. ANC has also circulated among its membership a draft bill of rights for a new South Africa, which embodies fundamental rights and freedoms. 38/ The bill affirms the protection of civil, political and legal rights as well as social, economic and educational rights and provides for a minimum floor of enforceable statutory rights in relation to each area. The bill envisages the protection of language, cultural and religious rights. The principle of equal rights between men and women and workers' rights are also recognized in the bill.

117. In a statement issued on 2 August 1991, PAC emphasized its agreement with the fundamental principles outlined in the Declaration, the result of an international consensus to which PAC was a party. Furthermore, PAC stressed that its agreement reflected the principle that gave birth to the Congress 31 years ago, namely, "self-determination, non-racialism, the return of the land to the dispossessed and the creation of an Africanist socialist democracy with guarantees not for minorities but rather for human rights". 39/

118. Concerning a bill of rights, IFP has stated:

> The new South Africa clearly needs a government that does not oppress the people and is recognizably respectful of individual rights ... In other words, we require a bill of rights that stands above the executive and legislature, that cannot be suspended save in an emergency, that cannot be changed except by very strict procedures, and which is enforced by an independent judiciary.

Regarding the role of government, IFP believes that:

> Government in the new South Africa should be stripped of the awesome powers that successive NP (National Party) Governments have built around prime ministers, state presidents and cabinets. This implies that regional government must be made a lot stronger, either in a unitary State or in one or another form of federal or other democratic State. 40/

119. In its submission for the present report, 14/ COSATU noted that at its fourth annual congress, held in July 1991, it resolved, inter alia, to support the inclusion in a new constitution of a bill of rights, which should protect the rights of both individuals and organizations (collective rights). According to COSATU, the following worker rights should be included in such a constitution: union rights, including the right to strike; union independence from government, employers and political parties; democratic and accountable government, including a popular right to overturn laws in a referendum; a democratically planned economy, including provision for jobs, a living wage and greater worker and union participation in the workplace and economy; and equality between men and women, including practical steps to promote it.

120. It has been suggested that the early ratification of the International Covenants on Human Rights and their application in domestic law would help ensure respect for human rights during the transition period. A number of initiatives have been supported by the international community to foster a better understanding of these issues; among these was a seminar on human rights in constitutional law organized by the United Nations at Geneva in June 1991.

B. Mechanism for the drafting of a new constitution

121. Regarding the mechanism to draw up a new constitution, the Government has proposed the convening of a multi-party conference "with the aim of setting in motion a process through which consensus in a future constitutional negotiating forum may be reached. The Government has stated that this conference could make decisions on its leadership, its rules of procedure, its agenda and any other matters deemed to be relevant to its mandate". 5/ In a statement made on 30 July 1991, the State President concluded with an appeal to every leader to assist in the convening of the multi-party conference as soon as possible. "Let us begin real negotiations" the State President said. 5/

122. In the context of the process of negotiations, the then Deputy President of ANC, Mr. Nelson Mandela, called on 8 January 1991 for an all-party congress, which would be convened only after the removal of the obstacles to negotiations. The all-party congress would have to carry out three tasks: (a) to set out the broad principles within which the detailed constitutional work would be carried out; (b) to determine the make-up of the body, such as an elected constituent assembly, that would draw up the constitution; and (c) to estabish an interim government to oversee the process of transition until a new parliament was elected, and a democratic government formed, on the basis of the new constitution.

123. At its forty-eighth National Conference, held in July 1991, ANC reaffirmed "the crucial importance of the following steps, which must be taken consequent to the removal of ALL obstacles: (1) the convening of the all-party congress; (2) the installation of an interim government; (3) the election of a democratic constituent assembly, and (4) the adoption of a democratic constitution and the election of a parliament representative of all the people of South Africa." 41/ The Conference further resolved that "these objectives should be achieved within a definite time-frame, to ensure that the process of negotiations is not drawn out". ANC has engaged in a campaign with other organizations to support the demand for a democratically elected constituent assembly on the basis of universal adult suffrage and one person one vote on a common voters' roll. 18/

124. In its submission for the present report, 9/ PAC stated that at its conference in December 1990 it reiterated its call for a constituent assembly "as the only democratic mechanism of drawing a constitution of a democratic society and further called for a transitional mechanism involving the United Nations and the Organization of African Unity to ensure that the outcome of any process of transition is democratic and just". According to PAC, it has agreed with ANC to convene by the end of September 1991 a patriotic front of all democratic forces to discuss a transitional mechanism and the constituent assembly. To this end, both ANC and PAC are now engaged in a process of consultation with a wide spectrum of organizations. In its submission PAC stated that IFP was the only party that had rejected the call for a patriotic front.

125. In its submission, 42/ the Solidarity Party stated that "it is likely that when the multi-party discussions commence in the near future, a joint declaration of principles will emanate [which will] endorse substantially the principles enunciated by the United Nations Declaration".

126. At its fourth annual congress, held in July 1991, COSATU supported the establishment of a broad patriotic front whose primary focus would be "to unite organizations of the oppressed and all those who support the call for a constituent assembly". The constituent assembly, which should be based on one person one vote on a common voters' roll, is regarded by COSATU as the central mechanism for drafting a new constitution. 14/

C. Arrangements and modalities for the transition to a new democratic order

127. The views of political parties, movements and concerned organizations on the arrangements and modalities range from the demand for the establishment of an interim government that would oversee the transition to the inclusion of non-parliamentary political parties in the present governmental administration of South Africa.

128. In its submission for the present report, 5/ the Government stated that it had acknowledged the need to give non-parliamentary parties and organizations a voice in important policy decisions during the period of transition to a new constitution, without impairing orderly administration and good government in terms of the existing Constitution. The Government believes that the multi-party conference is the appropriate forum to discuss the best means of achieving this objective in regard to decisions at both the executive and legislative levels.

129. At his news conference on 30 July 1991, State President F. W. de Klerk expressed his commitment once again "to transitional arrangements which will ensure, in a constitutionally acceptable manner, that the Government is unable to misuse its position of power to the detriment of its discussion partners in the negotiating process. I have an open mind on alternative methods. However, any steps in this connection have to result from negotiation. As far as I am concerned, they may be the first item on the agenda". 5/

130. At its forty-eighth National Conference, held in July 1991, the then Deputy President of ANC, Mr. Nelson Mandela, stressed that it would be "incorrect and unacceptable" for the present Government to continue to govern the country on its own during the transition period since it is one of the partners to the negotiations. 43/ In its submission, ANC pointed out that the task of the interim government would be to administer the transitional process to a democratically elected government. 18/

131. PAC has indicated that "it is willing to discuss the transitional arrangements and modalities in the process of drawing up a constitution at a bilateral and multilateral level with all key actors". According to PAC,

these issues "will also be a subject of discussion at the patriotic front. The regime supported by IFP is contemplating being both a referee and a player. Recently, it has called on liberation movements to be its partners in the supervision of transition. PAC does not accept this. This is tantamount to being partners in apartheid". 9/

132. According to IFP, the future should be legislated into existence. IFP considers that the present Government, no matter how politically illegitimate, must remain until replaced in the next non-racial election. However, the Government cannot rule without taking into account the views of its present and future negotiating partners. The IFP leader, Chief Mangosuthu Gatsha Buthelezi, has said that:

> South Africans do not want to leap into a constitutional vacuum; they want to move from the known to a clearly formulated next step in democratizing South Africa in an orderly and purposeful manner. 40/

133. COSATU, at its fourth National Congress, held in July 1991, resolved to campaign "for a sovereign interim government, consisting of representatives of major political parties, to administer the transition period and supervise the constituent assembly elections". 7/

134. In its submission, 7/ SACC pointed out that the revelations concerning the secret use of public funds to support political organizations had led to a crisis of confidence on the bona fide of the Government. Expressing the concern that, at this juncture, "people have not only lost faith in the Government as such, but have lost confidence in the negotiation process", SACC has stressed the demand for an interim government or some other form of transitional administration that will remove power from the National Party as it is one of the players in the negotiations. It considers that the fulfilment of this demand is indispensable to the achievement of a speedy peaceful transition to a new non-racial democratic South Africa.

VII. REVIEW OF THE IMPLEMENTATION OF THE PROGRAMME OF ACTION

135. By adopting the Declaration on Apartheid, Member States committed themselves to implementing the programme of action in the Declaration. This programme focused mainly on the following courses of action: (a) the international community was to remain seized of the issue of a political resolution of the South African question; (b) it was to step up all-round support for the opponents of apartheid; (c) it had to use concerted and effective measures aimed at applying pressure to bring a speedy end to apartheid and ensure that existing measures were not relaxed until there was clear evidence of profound and irreversible changes, bearing in mind the objectives of the Declaration.

136. In its resolutions 44/244 of 17 September 1990 and 45/176 A of 19 December 1990, subsequently adopted by consensus, the General Assembly called on the international community to adhere strictly to this programme of action.

137. Regarding the international community's sustained concern with the issue, the numerous statements and declarations issued by Governments, groups of countries and intergovernmental organizations since June 1990 attest to the fact that the international community has closely monitored events in South Africa during the period under review. While these countries and organizations have generally welcomed the steps taken by the South African Government towards the dismantling of apartheid, in particular the repeal of the basic laws of apartheid, they have also noted the shortcomings of such steps and expressed their concern about the violence affecting the country.

138. Thus, in a statement issued on 29 July 1991 at Kampala, the Organization of African Unity (OAU) Ad Hoc Committee of Heads of State and Government on Southern Africa, acknowledging that "significant developments had taken place" in South Africa, welcomed the repeal of apartheid legislation but emphasized that "the fundamental basis of apartheid, the undemocratic constitution, remains in place". Likewise, in a statement issued in London on 16 February 1991, the Commonwealth Committee of Foreign Ministers on Southern Africa (CFSA) welcomed the developments in South Africa and agreed that "these developments were a substantial progress on the situation" since May 1990. It noted, however, that "there had as yet been very little change on the ground". On 29 June 1991, the European Council "welcomed the important progress made towards the complete and irreversible abolition of apartheid", but noted that "obstacles remained on this path" and reiterated its concern about the violence. Similarly, in a statement issued on 23 March 1991, the Foreign Ministers of the Nordic countries "noted with satisfaction that progress has continued in South Africa", but expressed concern at the "brutal and meaningless violence".

139. Regarding the undertaking of the international community to increase its support to the opponents of apartheid, most intergovernmental organizations have also pledged to provide increased assistance to the democratic forces and disadvantaged sections of the population in South Africa. For instance, the leaders of the Group of Seven nations stated on 16 July 1991 that "South Africa needed the help of the international community, especially in those areas where the majority have long suffered deprivation: education, health, housing and social welfare" and that they would "direct their aid for these purposes". Earlier, on 15 December 1990, the European Community, "with the objective of sending a clear signal of support to the victims of apartheid", had "agreed to strengthen the programme of positive measures and to adapt it to the requirements of the new situation, including requirements related to the return and resettlement of exiles". In February 1991, CFSA endorsed a programme of training for Black South Africans and underlined that "there was an urgent need to take action" in this field. CFSA also noted that "the training and rehabilitation of returning exiles merited particular attention".

140. Finally, regarding the maintenance of existing measures aimed at applying pressure to bring a speedy end to apartheid, divergences have emerged. In recent months, a number of Governments from various regions of the world have taken the view that developments in South Africa allow the establishment of diplomatic or trade contacts or the lifting of some of their restrictive

measures. In this connection, in resolutions 44/244 and 45/176 A, the General Assembly expressed by consensus its "concern over any departures that have occurred from the international consensus reflected in the Declaration".

141. In response to these developments, the South African Government has stated that it can "look forward with greater confidence towards resuming its rightful position in the wider community of nations and restoring the many ties which were severed over the years". 44/ ANC, on the other hand, views "the premature lifting of sanctions" as "regrettable" and believes that "sanctions should continue as a necessary form of pressure to encourage the regime to advance the process towards a negotiated resolution of the South African conflict". 18/ PAC noted that it was "disturbed that Member States of the United Nations General Assembly who have adopted the Declaration are now acting in violation of this clause [para. 9 of sect. C, Programme of Action, of the Declaration]". 9/ SACC, stating that "there is still need for pressure to be exerted on the Pretoria regime", urged the international community to "maintain the sanctions position until the change in South Africa is irreversible and profound". 7/

142. In its submission for the present report, 14/ COSATU stated:

> It is clear that the international community has an important role to play in this process. It is vital that the international community intensifies its monitoring of the negotiation process, and steps up its efforts to ensure that the perspective contained in the United Nations Declaration of a genuine negotiated settlement is asserted.

Notes

1/ By 30 August 1991, submissions were received by the Secretariat from the Government of South Africa and from the following political parties, movements and organizations:

The African National Congress (ANC);

The Black Sash;

The Congress of South African Trade Unions (COSATU);

The Democratic Party;

The Human Rights Commission in South Africa;

The International Committee of the Red Cross (ICRC);

The Pan Africanist Congress of Azania (PAC);

The Solidarity Party;

The South African Chamber of Business (SACOB);

The South African Council of Churches (SACC);

The South African Institute of Race Relations (SAIRR).

2/ Report of the working group annexed to the Pretoria Minute of 6 August 1991 (press release 16/90 of 7 August 1990 of the Permanent Mission of South Africa to the United Nations).

3/ Government Gazette of 7 November 1990, No. 4584.

4/ Government Gazette of 9 November 1990, No. 4588.

5/ Submission of the Government of South Africa, dated 21 August 1991.

6/ Human Rights Commission (South Africa), special briefing SB-1, 11 June 1991.

7/ Submission of the South African Council of Churches, dated 27 August 1991.

8/ Press release of the Observer Mission of the African National Congress to the United Nations.

9/ Submission of the Pan Africanist Congress of Azania, dated 23 August 1991.

Notes (continued)

10/ Human Rights Commission (South Africa), press releases of 17 July and 18 August 1991.

11/ Human Rights Commission (South Africa), press release of 17 July 1991.

12/ Memorandum of Understanding between the Government of the Republic of South Africa and the United Nations High Commissioner for Refugees on the Voluntary Repatriation and Reintegration of South African Returnees, dated 16 August 1991.

13/ Press release of the United Nations High Commissioner for Refugees, dated 16 August 1991.

14/ Submission of the Congress of South African Trade Unions, dated 28 August 1991.

15/ Submission of the Human Rights Commission (South Africa), dated 7 August 1991.

16/ Submission of the Black Sash, dated 19 August 1991.

17/ Press release of the Observer Mission of the African National Congress of South Africa to the United Nations, dated 27 August 1990.

18/ Submission of the African National Congress, dated 28 August 1991.

19/ See for example the submission of the South African Council of Churches, dated 27 August 1991, and the submission of the Black Sash, dated 19 August 1991.

20/ Open letter to State President de Klerk and his Cabinet from the National Executive Committee of the African National Congress, 5 April 1991.

21/ Submission of the Democratic Party, dated 28 August 1991.

22/ Press statement of the African National Congress on the Repeal of the Population Registration Act, 17 June 1991.

23/ Media release of the Pan Africanist Congress of Azania, 17 July 1991.

24/ Press statement of the African National Congress on the Government White Paper on Land Reform, 12 March 1991.

25/ Press releases of the Pan Africanist Congress of Azania, 4 and 8 April 1991.

Notes (continued)

26/ Submission of the South African Chamber of Business (SACOB), dated 7 August 1991.

27/ The Citizen (Johannesburg), 21 March 1991.

28/ Press release of the Congress of South African Trade Unions on the passage of the Labour Relations Amendment Bill, 14 February 1991.

29/ Submission of the South African Institute of Race Relations, dated 23 August 1991.

30/ The Financial Times (London), 31 January 1991.

31/ Submission of the Government of South Africa, dated 21 August 1991, and South African Barometer (Johannesburg), 29 March 1991.

32/ Nelson Mandela, message to the International Conference on the Educational Needs of the Victims of Apartheid in South Africa, 25 June 1991.

33/ Press release of the Pan Africanist Congress of Azania, 4 April 1991.

34/ Lawyers' Committee for Civil Rights Under Law, South Africa in Transition, Update V, 22 February 1991.

35/ Press statement of the African National Congress on Pretoria's "declaration of war" against squatters, 10 June 1991.

36/ The Citizen (Johannesburg), 14 May 1991.

37/ African National Congress, discussion document, "Constitutional Principles and Structures for a Democratic South Africa".

38/ African National Congress, "A Bill of Rights for a New South Africa", working document by the ANC Constitutional Committee (Bellville), 1990.

39/ Press release of the Observer Mission of the Pan Africanist Congress of Azania to the United Nations, 2 August 1991.

40/ Leadership/The Watershed Years, "No Pushover: An interview with Inkatha's Mangosuthu Buthelezi" (Johannesburg), 1991, and submission of the South African Institute of Race Relations, dated 23 August 1991.

41/ Resolutions of the forty-eighth National Conference of the African National Congress, Durban, July 1991.

Notes (continued)

42/ Submission of the Solidarity Party, dated 16 August 1991.

43/ Statement of the Deputy President of the African National Congress, Nelson Mandela, at the opening of the ANC National Conference, Durban, 2-7 July 1991.

44/ Address by President F. W. de Klerk at the opening of the third session of the Ninth Parliament, 1 February 1991.

ANNEX II

EXCERPTS FROM THE REPORT OF THE WORKING GROUP ON POLITICAL OFFENCES DATED 21 MAY 1990

DEFINING POLITICAL OFFENCES IN THE SOUTH AFRICAN SITUATION

6.1 The following classes of persons, whether inside or outside South Africa, must be taken into account with regard to pardon or indemnity for political offences:

(a) Persons already sentenced, including persons serving a sentence, persons subject to any suspended sentence, persons awaiting execution of a sentence or where the case is on appeal or review;

(b) Persons who may be liable to prosecution, or who are awaiting or undergoing trial;

(c) Persons in detention.

6.2 The power to pardon is vested in the State President by virtue of section 6 of the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), and section 69 of the Prisons Act, 1959, and will apply to persons already sentenced, i.e. class (a) above.

6.3 Special power to grant indemnity is required in regard to persons referred to in class (b) above. The relevant power is contained in section 2 of the Indemnity Act, 1990. Section 6 of the Criminal Procedure Act, 1977, provides for the stopping of a prosecution and may therefore be applied.

6.4 The recommendations contained in this document relate only to political offences and in no way imply any limitation upon the general exercise of the power mentioned in paragraphs 6.2 and 6.3.

6.5 In preparing for the making of "recommendations on a definition of political offences in the South African situation", the following principles and factors were noted (the principles and factors are largely those applied by Prof. Norgaard in the Namibian situation after study of the jurisprudence and the representations of the parties concerned and do not purport to be exhaustive):

6.5.1 There is no generally accepted definition of "political offence" or "political prisoner" in international law. What is generally accepted, however, is that principles developed in the field of extradition law are relevant in distinguishing between "political offences" and "common crimes".

6.5.2 The law and practice of States show that there is now a considerable degree of consensus both as to the types of offence which may in principle be classified as political as well as to the sort of factors which should be taken into account in deciding whether an offence is "political" or not. In particular, the following are aspects of the law and practice of extradition which appear to provide valuable guidance:

(a) Whether or not an offence is political depends on the fact and circumstances of each individual case. The question is thus approached on a case-by-case basis.

(b) Certain offences are recognized as "purely" political, e.g. treason directed solely against the State and not involving a common or "ordinary" crime such as murder or assault: or the dissemination of subversive literature.

(c) In certain circumstances a "common" crime, even a serious one such as murder, may be regarded as a political offence. Here the following are of principal factors which are commonly taken into account by national courts:

(i) The motive of the offender - i.e. was it a political motive (e.g. to change the established order) or a personal motive (e.g. to settle a private grudge).

(ii) The context in which the offence was committed, especially whether the offence was committed in the course of or as part of a political uprising or disturbance.

(iii) The nature of the political objective (e.g. whether to force a change in policy or to overthrow the Government).

(iv) The legal and factual nature of the offence, including its gravity (e.g. rape could never be regarded as a political offence).

(v) The object of the offence (e.g. whether it was committed against government property or personnel or directed primarily against private property or individuals).

(vi) The relationship between the offence and the political objective being pursued, e.g. the directness or proximity of the relationship, or the proportionality between the offence and the objective pursued.

(vii) The question whether the act was committed in the execution of an order or with the approval of the organization, institution or body concerned.

6.6.1 The Working Group endorses the principles and factors set out in paragraph 6.5.2 and accepts that these will form the basis of guidelines to meet the South African situation when considering the grant of pardon or indemnity in respect of political offences.

6.6.2 As stated in the Groote Schuur Minute, it is understood that the Government may in its discretion consult other political parties and movements, and other relevant bodies with regard to the grant of pardon or indemnity in respect of offences relating to them. For this purpose it shall be free to formulate its own guidelines which it will apply in dealing with members of such organizations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed.